No. 07-975

IN THE

Supreme Court of the United States

RONALD VOSE,

Petitioner,

v.

DONALD KLIMENT, Chief of Police of the City of Springfield, IL, in his individual capacity and WILLIAM ROUSE, Deputy Chief of Police of the City of Springfield, IL, in his individual capacity,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

ANGELA M. FYANS
CORPORATION COUNSEL'S OFFICE
CITY OF SPRINGFIELD, ILLINOIS
800 East Monroe Street
Room 313
Springfield, Illinois 62701
(217) 789-2393

Attorney for Respondents

215504

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Did the Seventh Circuit err when it held that the speech of the Petitioner, a police sergeant, was not constitutionally protected given that his actions and statements were made pursuant to his official duties?

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COUNTERSTATEMENT OF FACTS

The United States Court of Appeals for the Seventh Circuit applied *Garcetti v. Ceballos*, 547 U.S. 410, 126 S. Ct. 1951 (2006), to reverse the District Court's denial of a Rule 12(b)(6) motion to dismiss. The Seventh Circuit held that the Respondents were entitled to qualified immunity because no constitutional right was violated and the Petitioner failed to state a claim under § 1983. The facts alleged in the complaint (App. A.) are taken as true:

This case involves Chief of Police Donald Kliment (hereinafter "Chief") of the City of Springfield, Illinois, Deputy Chief of Police William Rouse (hereinafter "Deputy Chief") in charge of the criminal investigations division, and police Sergeant Ronald Vose (hereinafter "Employee Sergeant") of the criminal investigations division narcotics unit. [App. A. ¶ 2, 3, 9].

In July 2002, the Employee Sergeant was promoted to sergeant in the narcotics unit, a part of the criminal investigations division. [App. A. ¶ 13]. In that position, the Employee Sergeant was the supervisor of the narcotics unit. [App. A. ¶ 14]. The Employee Sergeant reported to Lt. David Dodson (hereinafter "Dodson"), who supervised the criminal investigations division containing the narcotics unit and the major case unit. Dodson in turn reported to the Deputy Chief. [App. A. ¶ 15].

In the summer of 2004, the Employee Sergeant learned that detectives in the major case unit of the criminal investigations division (hereinafter the

"Detectives") were using drug investigations as a means to gather evidence by allegedly searching the trash from a specific residence or specific location in order to have a lawful basis to obtain search warrants for that residence or location, a practice referred to as a "trash rip." [App. A. ¶ 16]. The Employee Sergeant became concerned that the trash rips could compromise ongoing drug investigations being conducted by the narcotics unit and about the lack of coordination in the criminal investigations division between the major case unit and the narcotics unit. [App. A. ¶ 17].

The Employee Sergeant brought the information and his concerns to his superior officers, including but not limited to Dodson, the Deputy Chief and the Chief. [App. A. ¶ 23]. The Chief assured the Employee Sergeant that the matters would be addressed, but neither the Chief nor the Deputy Chief took any apparent action to address these matters. [App. A. ¶ 24]. During the fall of 2004, the Employee Sergeant continued to voice his concerns in departmental meetings at which the Deputy Chief was present. [App. A. ¶ 25].

On November 16, 2004, the Employee Sergeant told the Deputy Chief that the Detectives were going to testify in court and there may be a problem with their testimony. [App. A. ¶ 26]. He suggested that the Deputy Chief attend the trial. [App. A. ¶ 27]. The Deputy Chief directed the Employee Sergeant to attend the trial and report back to the Deputy Chief. [App. A. ¶ 28]. The Employee Sergeant attended the trial and learned that documents in the possession of the police department and in the files of one of the Detectives had not been turned over to the defendant's attorney. [App. A. ¶ 29].

An incident occurred at the courthouse, prompting the Detectives and their supervisor to file an internal affairs complaint against the Employee Sergeant. [App. A. ¶ 33]. The Employee Sergeant reported to the Deputy Chief about what he learned at the trial. [App. A. ¶ 32]. In December 2004, the Employee Sergeant received a letter from the Deputy Chief ordering the Employee Sergeant to report to him in writing the alleged incidents of misconduct by the Detectives. [App. A. ¶ 37].

On February 14, 2005, the Employee Sergeant told the Deputy Chief that due to the sensitive nature of his memo regarding the Detectives' conduct, the Employee Sergeant intended to deliver the memo directly to the Chief. [App. A. ¶ 41]. On February 23, 2005, the Employee Sergeant was interrogated by internal affairs about the courtroom incident and his reporting of information to his superior officers about the Detectives. [App. A. ¶ 42].

On March 2, 2005, the Employee Sergeant told the Chief his memo was forthcoming. The Employee Sergeant subsequently hand-delivered the memo to the Chief. The memo set out specific instances of misconduct by the Detectives and the major case unit. At the time he delivered the memo to the Chief, the Employee Sergeant discussed the allegations with the Chief. [App. A. ¶ 45].

On April 12, 2005, the Employee Sergeant was directed to, and did, meet with the Chief, the Deputy Chief, Lieutenant Rickey Davis and Sergeant Kurt Banks. At the end of the meeting the Chief told the Employee Sergeant to get along with the Detectives and

supervisors about whom the Employee Sergeant had complained or request a transfer out of the narcotics unit and into the patrol division by April 15, 2005. [App. A. ¶ 50].

On April 14, 2005, the Employee Sergeant met with Mayor Timothy Davlin to voice his complaints because the Employee Sergeant was concerned that the Chief and Deputy Chief would continue to take no action on or cover up the Employee Sergeant's complaints. [App. A. ¶ 51]. On April 15, 2005, at 4:50 p.m., the Employee Sergeant delivered a memo to the Chief. [App. A. ¶ 52].

On April 27, 2005, the Employee Sergeant was transferred from the narcotics unit to the patrol division pursuant to the Chief's directive. The directive was delivered to the Employee Sergeant by the Deputy Chief. The transfer was effective May 1, 2005. [App. A. ¶ 55]. The Employee Sergeant resigned. [App. A. ¶ 59].

On February 1, 2006, the Employee Sergeant filed suit against the Chief and the Deputy Chief, alleging that his First Amendment rights were violated when the Chief and the Deputy Chief retaliated against him when he was transferred for speaking out about misconduct by the Detectives. The Chief and the Deputy Chief filed a Rule 12(b)(6) motion to dismiss based on *Garcetti* and qualified immunity. The district court denied the Chief and the Deputy Chief's motion, finding that *Garcetti* did not affect the Employee Sergeant's First Amendment protection. Specifically, the court stated, "*Garcetti* neither clarified nor narrowed the rights of government employees to speak out on matters which are inherently part of their job duties, meaning

Garcetti did not change the law applicable to First Amendment actions in the Seventh Circuit." *Vose v. Kliment*, 2007 WL 757828, at *10 (C.D. Ill. March 8, 2007).

The Chief and the Deputy Chief appealed to the Seventh Circuit, which reversed the district court's denial of their motion to dismiss. In an opinion by Judge Bauer, the Seventh Circuit held that the Employee Sergeant's speech was pursuant to his job duties and responsibilities and thus the Employee Sergeant's speech was not protected by the First Amendment. The Seventh Circuit declined to read beyond the text of *Garcetti* since "the *Garcetti* standard of 'official duties'" is "clear enough." *Vose v. Kliment*, 506 F.3d 565, 572 (7th Cir. 2007). The court stated "while Vose may have gone beyond his ordinary daily job duties in reporting the suspected misconduct outside his unit, it was not beyond his official duty as a sergeant of the narcotics unit to ensure the security and propriety of the narcotics unit's operations." *Vose*, 506 F.3d at 572. Additionally, the court stated, "Vose ignores his own statements that his independent investigation stemmed from his concerns about how the detectives' misconduct might affect his work in the narcotics unit. Ensuring the lawful operations of narcotics investigations was clearly expected of Vose." *Vose*, 506 F.3d at 571. The Seventh Circuit concluded because no constitutional right was violated, the Employee Sergeant's complaint failed to state a claim under 42 U.S.C. § 1983. *Vose*, 506 F.3d at 572.

REASONS FOR DENYING THE PETITION

I. Neither the decision below nor the record raises the Question Presented in the petition.

The question the Petitioner puts to this Court cannot be extracted from the opinion below. The sole Question Presented in the petition (p. i) is whether a police officer who advises his superiors and the Mayor about misconduct and corruption in a unit for which he does not have "responsibility or authority, which wrongdoing and corruption the police officer investigated and uncovered on his own initiative, is entitled to the protection of the First Amendment under *Garcetti* (full citation omitted)." The Seventh Circuit did not decide that question in this proceeding. Moreover, the facts of the record will not support a determination of that specific question by this Court.

The Seventh Circuit's opinion is based on the facts as pled by the Employee Sergeant in his complaint. *Vose*, 506 F.3d at 569. The Employee Sergeant was concerned that the misconduct and trash rips of detectives in another unit of the criminal investigations division would affect his unit's investigations also in the criminal investigations division. [App. A. ¶ 17, 21, 22]. He investigated because he was worried that it would affect his work. [App. A. ¶ 17, 18]. After he presented his allegations, he was ordered to put his allegations into writing by his Deputy Chief. [App. A. ¶ 37]. The Employee Sergeant was further directed by his Deputy Chief to attend the trial in which the Detectives would be testifying and report back to the Deputy Chief. [App. A. ¶ 26-28].

The Question Presented omits some critical facts. The question does not state that the Employee Sergeant was ordered by his superior to investigate and document the allegations. Moreover, the record indicates that the Employee Sergeant was investigating the misconduct because of his responsibility and authority over his narcotics unit and his concern that the misconduct would affect his unit's operation.

In the context of the record, the Question Presented in the petition is based on a hypothetical situation, not on the facts as pled in this case. Thus, the question could be resolved only by rendering an impermissible advisory opinion.

II. The Seventh Circuit's decision is entirely consistent with *Garcetti*.

The Seventh Circuit correctly observed that this Court's decision in *Garcetti* is controlling. *Garcetti* held "that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." *Garcetti*, 547 U.S. at 421. This Court reasoned that the plaintiff in that case, a deputy district attorney, did not act as a citizen while performing "daily professional activities, such as supervising attorneys, investigating charges, and preparing filings. * * * When he went to work and performed the tasks he was paid to perform, Ceballos acted as a government employee." *Garcetti*, 547 U.S. at 422.

This Court recognized that the inquiry into whether employee speech is pursuant to employment duties is a practical one. This Court mentioned, but rejected, "the suggestion that employers can restrict employees' rights by creating excessively broad job descriptions." *Garcetti*, 547 U.S. at 424. "[T]he listing of a given task in an employee's written job description is neither necessary nor sufficient to demonstrate that conducting the task is within the scope of the employee's professional duties for First Amendment purposes." *Garcetti*, 547 U.S. at 425.

Following the framework set forth by this Court in *Garcetti*, the Seventh Circuit found the Employee Sergeant's speech was pursuant to his job responsibilities. Paragraph 17 of the complaint states that "[w]hen he learned about these trash rips, [the Employee Sergeant] became concerned about (a) the possibility that those trash rips could compromise ongoing drug investigations being conducted by his unit and (b) the lack of coordination between the activities of the major case unit and the narcotics unit." (App. A.). Thus, the Employee Sergeant was being a diligent supervisor in investigating the alleged misconduct within the division and determining whether the misconduct of the detectives would affect the narcotics unit's investigations. The Seventh Circuit properly rejected the Employee Sergeant's claim to First Amendment protection based on this Court's ruling in *Garcetti*. *Garcetti* dealt only with the extent of First Amendment protection to public employees speaking pursuant to their job duties. *Garcetti*, 547 U.S. at 425. This Court held that a government employee speaking pursuant to an official duty is precluded from claiming First Amendment protection for speech "as a citizen." *Garcetti*, 547 U.S. at 422.

Taking the well-pleaded facts as true, the Seventh Circuit rejected the notion that the Employee Sergeant was entitled to First Amendment protection. The Employee Sergeant alleges that he suffered adverse employment actions at the hands of the Chief and the Deputy Chief for being a whistleblower exposing wrongdoing and corruption by detectives in a unit within the same criminal investigations division as the Employee Sergeant. The Employee Sergeant alleges that he did this on his own initiative; however, paragraph 37 of the complaint states that the Employee Sergeant received a letter from the Deputy Chief ordering the Employee Sergeant "to report to him in writing the alleged incidents of misconduct by City of Springfield police detectives." [App. A. ¶ 37]. The Employee Sergeant learned of the trash rips and the search warrant issues through his job. He then further investigated pursuant to his job because he was worried that the misconduct would compromise ongoing investigations by his unit. He was also concerned about the lack of coordination between the two units comprising the criminal investigations division in regard to the drug investigations.

In evaluating whether the Employee Sergeant's communications should be insulated, the Seventh Circuit stated, "Vose's initial statements regarding the alleged misconduct of the detectives in the major case unit were pursuant to his official duties as supervisor of the narcotics unit." *Vose*, 506 F.3d at 570.

> As a supervisor of the narcotics unit, it can hardly be said that Vose did not have a duty to make sure his unit's investigations were not

> compromised by some outside influence, or that Vose did not have duty to coordinate his unit's work with other related units in the police department.

Vose, 506 F.3d at 570. Similar to the communication at issue in *Garcetti*, the Employee Sergeant's speech was not that of a private citizen but of a public employee.

The Employee Sergeant seeks to obtain First Amendment protection for his on the job speech pursuant to his job duties and job responsibilities. The Employee Sergeant was ordered to investigate and report the allegations of misconduct to the Chief and to the Deputy Chief. The Seventh Circuit focused on "the initial oral statements made by Vose to Kliment and Rouse because all other speech regarded the same alleged misconduct and most of it was pursuant to direct orders of Rouse and Kliment." *Vose*, 506 F.3d at 569. Thus, the Employee Sergeant's reporting of misconduct was pursuant to his job responsibilities as sergeant and supervisor in the criminal investigations division. Moreover, the Employee Sergeant does not allege a single instance when his criticism of the Detectives was made in his capacity as a private citizen.

The petition omits key details pled in the complaint that formed the basis for the Seventh Circuit's decision (*See* App. A.). The Employee Sergeant, a supervisor in the criminal investigations division, alleges that (1) he discovered in an independent investigation that detectives from the major case unit of the criminal investigations division were engaging in improper conduct when carrying out their job duties and in

testimony given during trial; [App. A. ¶ 16-22] (2) he raised these issues, orally and in writing, to his superior officers, including the Chief, the Deputy Chief and the Mayor of Springfield; [App. A. ¶ 23, 25, 26, 32, 45, 51] (3) for expressing his concerns, he was subjected to retaliatory employment actions, such as written reprimands, interference with his job duties, and a demotion; [App. A. ¶ 33-36, 40, 42, 47-48, 50, 52-58] and (4) working conditions became so intolerable that he was compelled to resign. [App. A. ¶ 34, 35, 40, 42, 47, 53-55, 58]. The Seventh Circuit properly found the Employee Sergeant's actions and statements were made pursuant to his official duties as a supervisor in the criminal investigations division. The Seventh Circuit noted that the Employee Sergeant's "argument fails to consider his own admitted interests in the investigation: that the alleged misconduct could directly affect his narcotics unit." *Vose*, 506 F.3d at 570. As the Seventh Circuit stated, "a public employee's more general responsibilities are not beyond the scope of official duties for First Amendment purposes." *Vose*, 506 F.3d at 571.

Additionally, the petition has exaggerated the existence of conflicting decisions. The Seventh Circuit's decision does not conflict with the decisions of any other Circuit. Instead, the Circuit cases cited by the Employee Sergeant on pages 20-21 of the petition show consistency by the Third, Fifth, Seventh and Tenth Circuits in their application of *Garcetti* and the "official duties" test. *See, e.g., Davis v. McKinney*, 518 F.3d 304, 312 (5th Cir. 2008) ("'Under *Garcetti*, we must shift our focus from the content of the speech to the role the speaker occupied when he said it.'"); *Casey v. W. Las Vegas Indep. Sch. Dist.*, 473 F.3d 1323, 1329 (10th Cir. 2007) (speech within the employer's "portfolio" is made pursuant to official duties);

Williams v. Dallas Indep. Sch. Dist., 480 F.3d 689, 693 (5th Cir. 2007) (speech is made pursuant to official duties when it reasonably contributes to or facilitates the employer's performance of the official duty); *Foraker v. Chaffinch*, 501 F.3d 231, 241 (3rd Cir. 2007) (employees expected, pursuant to their job duties, to report problems concerning the operations of their unit "up the chain of command"); *Brammer-Hoelter v. Twin Peaks Charter Academy*, 492 F.3d 1192, 1203 (10th Cir. 2007) (*Garcetti* "made clear that speech relating to tasks within an employee's uncontested employment responsibilities is not protected from regulation"); *Spiegla v. Hull*, 481 F.3d 961, 966 (7th Cir. 2007) ("[b]ecause Spiegla reported the possible security breach to Schrader as part of her official responsibility as a correctional officer to keep the prison secure, her speech was not 'citizen' speech protected by the First Amendment."); *Mills v. City of Evansville*, 452 F.3d 646, 648 (7th Cir. 2006) ("spoke in her capacity as a public employee contributing to the formation and execution of official policy."); *Sigsworth v. City of Aurora*, 487 F.3d 506, 511 (7th Cir. 2007) ("was merely doing what was expected of him as a member of the task force charged with organizing and overseeing the planning and execution of the arrest warrants."); *Haynes v. City of Circleville*, 474 F.3d 357, 364 (6th Cir. 2007) (police officer voicing his protests to the Police Chief against training cutbacks was "unprotected as a matter of law because all of the speech at issue in this case, like the speech at issue in *Garcetti*, was made pursuant to his official duties.") There is uniformity of the application of the "official duties" test, not a disharmony amongst the circuits.

The Seventh Circuit has strictly followed this Court's holding in *Garcetti*. The petition fails to identify an important and unresolved question of federal law that needs to be decided by this Court. The petition is based upon a misreading of this Court's precedent and upon a few district courts' aberrant rulings. After *Garcetti*, courts are now required to first determine the individual's status as a citizen or employee. If the speech is made as part of the employee's job duties, that speech is not protected by the First Amendment and the employee is not protected from appropriate discipline. The Seventh Circuit's opinion in this case increases uniformity of the law, and the petition presents no question worthy of this Court's attention.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

ANGELA M. FYANS
CORPORATION COUNSEL'S OFFICE
CITY OF SPRINGFIELD, ILLINOIS
800 East Monroe Street
Room 313
Springfield, Illinois 62701
(217) 789-2393

Attorney for Respondents

APPENDIX

APPENDIX — EMPLOYEE SERGEANT'S DISTRICT COURT COMPLAINT FILED FEBRUARY 1, 2006, IN THE CENTRAL DISTRICT OF ILLINOIS, SPRINGFIELD DIVISION

IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS SPRINGFIELD DIVISION

No.: 06-3022

RONALD VOSE,

Plaintiff,

v.

DONALD KLIMENT, Chief of Police of the City of Springfield, in his individual capacity; and WILLIAM ROUSE, Deputy Chief of Police of the City of Springfield, in his individual capacity,

Defendants

COMPLAINT

Plaintiff RONALD VOSE, by his attorneys Howard W. Feldman (Lead Attorney) and Stanley N. Wasser of Feldman, Wasser, Draper & Benson, and for his Complaint against Defendants DONALD KLIMENT and WILLIAM ROUSE and states as follows:

1. Plaintiff RONALD VOSE (hereinafter "VOSE") is a resident of the City of Springfield, County of Sangamon, and State of Illinois.

2. Defendant DONALD KLIMENT (hereinafter "KLIMENT") is a resident of the County of Sangamon, and State of Illinois. At all times relevant to the matters set forth in this Complaint, KLIMENT was the duly appointed and serving Chief of Police of the City of Springfield.

3. Defendant WILLIAM (hereinafter "ROUSE") is a resident of the County of Sangamon, and State of Illinois. At all times relevant to the matters set forth in this Complaint, ROUSE was the duly appointed and serving Deputy Chief of Police of the City of Springfield heading up the police department's investigations division.

4. As Deputy Chief, Defendant ROUSE reported to Assistant Chief of Police Ralph Caldwell and to Defendant KLIMENT.

Jurisdiction and Venue

5. Jurisdiction of the United States District Court for the Central District of Illinois for this Complaint is conferred by 28 U.S.C. §§1343(a)3) and (a)(4) as Plaintiff seeks redress for the deprivation under color of state law of rights secured to him by the Constitution of the United States.

6. At all times relevant to the matters stated in this Complaint, there was in force and effect a federal law known as the Civil Rights Act of 1871 [42 U.S.C. §1983] which provides in relevant part as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

7. At all times relevant to the matter stated in this Complaint, there was in force and effect and applicable to the City of Springfield and its police officers the following provisions of the Constitution of the United States of America:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. [U.S. Const., Amend. I]
>
> * * *
>
> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. [U.S. Const., Amend. XIV]

8. Venue of this action is appropriate in this Court pursuant to 28 U.S.C. §1391(b) as all of the Defendants are residents of the Central District of Illinois or, alternatively, that a substantial part of the events giving rise to the claims herein occurred in the Central District of Illinois.

Factual Statement

9. VOSE was a duly appointed and sworn police officer of the City of Springfield and held the civil service rank of Sergeant.

10. As of 2004, VOSE had been a City of Springfield police officer for more than 26 years and was one of the longest serving City of Springfield police officers.

11. VOSE had received awards and commendations for the work that he had done as a police officer.

12. During his career as a City of Springfield police officer, VOSE had served as a representative of the City of Springfield on several multi-agency drug task forces along with sworn officers from the Drug Enforcement Administration, the Illinois State Police and the Sangamon County Sheriff's Department. VOSE had over 1,000 hours of narcotics related police training; over 13 years of narcotics related experience including undercover drug purchases, controlled drug purchases and 3 years as the Springfield Police Department narcotics unit supervisor; and had received several awards from the Springfield Police Department for outstanding work in narcotics investigations.

13. In July 2002, VOSE was promoted to Sergeant in the narcotics unit of the City of Springfield police department. VOSE had previously worked narcotics for an extended period of time prior to his promotion.

14. In the position of Sergeant in the narcotics unit VOSE was the supervisor of the narcotics unit.

15. As head of the narcotics unit VOSE reported directly to Lt. David Dodson who in turn reported directly to Defendant ROUSE.

16. Prior to the summer of 2004, and while working in that narcotics unit, VOSE learned that detectives in the City of Springfield police department working not in the narcotics unit, but in the major case unit, were using alleged drug investigations as a means to gather evidence by allegedly searching the trash from a specific residence or specific location in order to have a lawful basis to obtain search warrants for the specific residence or specific location. This search technique was and is commonly referred to as "trash rips".

17. When he learned about these trash rips, VOSE became concerned about (a) the possibility that those trash rips could compromise ongoing drug investigations being conducted by his unit and (b) the lack of coordination between the activities of the major case unit and the narcotics unit.

18. Acting on his concerns, VOSE reviewed various applications for search warrants made by the major case

unit officers and reviewed the warrants issued by judges on the basis of these search warrant applications.

19. From his review of the search warrant applications and the issued search warrants, VOSE learned that (a) detectives of the City of Springfield major case unit were failing to follow City of Springfield police department procedures for obtaining search warrants; (b) there were apparent violations by the detectives of laws that VOSE knew were applicable to the search warrant process; and (c) that the detectives had filed factually inaccurate, misleading or false affidavits with the courts in support of the detectives' applications for search warrants.

20. More particularly, VOSE's review of the situation led him to conclude that: (a) the detectives were claiming the use of confidential sources who had not been registered with the City of Springfield police department in accordance with the established practices of the police department; and (b) the information from these confidential sources were being utilized as the basis for search warrant applications by the detectives;

21. Further, VOSE learned from his review of the situation that search warrants were being utilized by detectives for purposes of obtaining information on drug investigations when, in fact, no such drug investigation was being undertaken by the City of Springfield police department narcotics unit.

22. Based upon what VOSE had learned from his review, VOSE became concerned that the drug investigations were pretextual, were not always based upon probable cause and were apparently being used for purposes of obtaining information related to other crimes for which there was no basis to obtain a search warrant.

23. Acting upon his review and concerns, VOSE first brought this information and concerns to the attention of his then superior officers, including but not limited to Lt. David Dodson, Defendant ROUSE and Defendant KLIMENT.

24. VOSE was assured by Defendant KLIMENT that the matters would be addressed, however neither Defendant KLIMENT nor Defendant ROUSE took any apparent actions to address these matters.

25. During the fall of 2004, VOSE continued to voice his concerns in department meetings about the detectives' use of undocumented confidential sources, the detectives' questionable techniques for search warrants, and the failure to properly document cash payments to the undocumented sources. Defendant ROUSE was present at these meetings.

26. On November 16, 2004, VOSE told Defendant ROUSE that detectives about whom VOSE had previously raised questions were going to testify in court at the Sangamon County courthouse in a trial involving a defendant named Anthony Grimm and that there may be a problem with their testimony.

27. VOSE suggested that Defendant ROUSE attend the trial.

28. Defendant ROUSE advised VOSE that he, Defendant ROUSE, did not have the time and directed VOSE to attend the trial and report back to him.

29. VOSE attended the trial. During the course of listening to the matters presented in the courtroom, VOSE learned that documents in the possession and control of the City of Springfield police department had not been turned over prior to trial to the defendant's attorney, including documents in the files of one of the detectives.

30. While at the courthouse one of the detectives confronted VOSE about whether VOSE was working for the defense in the Grimm case.

31. At no time was VOSE working for the defense in the Grimm case.

32. VOSE reported back to Defendant ROUSE on what he heard and observed during the trial, and that one of the detectives had accused VOSE of working for the defense.

33. After the incident at the courthouse, VOSE was called by Defendant ROUSE and advised that the detectives, as well as the detectives' supervisor, were in the process of filing an internal affairs complaint against VOSE based upon what took place in the courtroom.

34. On November 30, 2004, VOSE was served with an internal affairs complaint related to the incident at the courtroom.

35. Following the time in which VOSE brought the information and concerns to Defendant ROUSE and Defendant KLIMENT, Defendant ROUSE started interfering in the operation of the narcotics unit by revising work schedules and assigning to the unit an additional Sergeant who had limited narcotics experience and no experience as a narcotics supervisor. This additional Sergeant was to be responsible for "administrative matters".

36. On information and belief, Defendant ROUSE's revision of the narcotics unit work schedules and the assignment of an inexperienced Sergeant to the narcotics unit were done with the knowledge and consent of Defendant KLIMENT.

37. In December 2004, VOSE received a letter from Defendant ROUSE ordering VOSE to report to him in writing the alleged incidents of misconduct by City of Springfield police detectives.

38. Prior to this time, no action had occurred concerning VOSE's oral reporting of events six months previously.

39. At the time VOSE received Defendant ROUSE's letter, VOSE was about to start an approved vacation leave from December 18, 2004 until January 3,

2005. VOSE advised Defendant ROUSE by e-mail of the vacation leave and told Defendant ROUSE that he, VOSE, would respond upon his return. Defendant KLIMENT was copied on the e-mail.

40. On December 20, 2004, and after VOSE had begun his vacation, Defendant KLIMENT issued a directive changing the work schedule of the narcotics unit effective January 1, 2005.

41. On February 14, 2005, VOSE informed Defendant ROUSE that due to the sensitive nature of his memorandum concerning the misconduct allegations of the detectives VOSE intended to deliver the memorandum directly to Defendant KLIMENT. VOSE was aware that his memorandum would document the failure of Defendant ROUSE to act on VOSE's prior complaints against the detectives.

42. On February 23, 2005, VOSE was subjected to an internal affairs interrogation about his involvement at the courthouse during the Grimm case and his reporting of information to his superior officers about the detectives.

43. Prior to this time no action or investigation had taken place of the detectives about whom VOSE had originally made complaints.

44. On February 24, 2005 a newspaper article was published regarding the allegations of misconduct and alleged perjury by the detectives.

45. On March 2, 2005, VOSE advised Defendant KLIMENT by email that his memorandum would be forthcoming. Defendant VOSE subsequently hand delivered to Defendant KLIMENT a memorandum setting out specific instances of misconduct by the detectives and the major case unit in which the detectives worked. At the time he delivered the memorandum VOSE had a discussion with Defendant KLIMENT about the matters he, VOSE, was raising in his memorandum. During this discussion, Defendant KLIMENT assured VOSE that he, VOSE would not be transferred out of the narcotics unit unless VOSE requested the transfer.

46. On March 3, 2005, a newspaper article was published implicating wrongdoing by one of the detectives about whom VOSE had previously complained.

47. Between the time of the assignment of the administrative Sergeant and VOSE's delivery of his memorandum to Defendant KLIMENT: (a) a drug search had been conducted by administrative Sergeant and members of the narcotics unit without notification to VOSE and in a manner that resulted in an unlawful execution of an anticipatory search warrant, and (b) the administrative Sergeant participated in another drug search without notification to VOSE and pursuant to a warrant obtained by the same detectives about whom VOSE had complained previously, the validity of which search warrant subsequently came into question.

48. Previous to these two drug searches, all searches undertaken since January 1, 2005, by the narcotics unit or by narcotics unit personnel, were carried out under the supervision and responsibility of VOSE who had been designated by Defendant KLIMENT and Defendant ROUSE to be responsible for operational matters of the narcotics unit.

49. As of the time VOSE delivered his memorandum to Defendant KLIMENT, the internal affairs investigation of VOSE was continuing however, on information and belief, neither Defendant KLIMENT nor Defendant ROUSE took any actions with regard to the detectives based upon their testimony in the Grimm trial or based upon the information and concerns VOSE had previously provided to Defendant ROUSE and Defendant KLIMENT about these the detectives.

50. On April 12, 2005, VOSE was directed to and did meet with Defendant KLIMENT, Defendant ROUSE, Lt. Ricky Davis and Sergeant Kurt Banks. At the end of the meeting VOSE was told by Defendant KLIMENT to either get along with the detectives and supervisors about whom VOSE had voiced concern or to request a transfer out of the narcotics unit to the patrol division and have it back to Defendant KLIMENT on Friday, April 15, 2005.

51. On April 14, 2005, and concerned that Defendant KLIMENT and Defendant ROUSE were going to continue to sit on or cover up his complaints about the detectives, VOSE met with City of Springfield

Mayor Timothy Davlin to make sure that Mayor Davlin was aware of VOSE"s complaints. On information and belief, Mayor Timothy Davlin informed Defendant KLIMENT of their meeting.

52. On April 15, 2005, VOSE delivered his memorandum to Defendant KLIMENT at 4:50 p.m. as he understood he was required to do. In that memorandum VOSE pointed out that he considered the transfer to be a forced transfer and not voluntary on his part.

53. On April 18, 2005, VOSE found two empty cardboard boxes with his name on them outside his office. The obvious message to VOSE of the two boxes was that VOSE was going to be sent packing.

54. On April 19, 2005, Defendant ROUSE issued a written reprimand to VOSE for delivering his memorandum to Defendant KLIMENT later than the date and time he was ordered to do so. VOSE was ordered by Defendant ROUSE to sign the reprimand. On April 25, 2005, VOSE sent a memorandum to Defendant KLIMENT contesting the reprimand.

55. On April 27, 2005, VOSE was transferred from the narcotics unit to the patrol division pursuant to a directive of Defendant KLIMENT. The directive was delivered to VOSE by Defendant ROUSE. The transfer was effective May 1, 2005. VOSE was assigned to the second shift which operated from 2:30 p.m. to 11:30 p.m.

56. At the time of this directed transfer, VOSE had not performed patrol duties for the past seven years. The patrol division position to which VOSE was transferred was a less desirable position than that of Sergeant supervising the narcotics unit. VOSE had not requested the transfer.

57. On May 17, 2005, VOSE was issued a written reprimand arising out of the courtroom incident in November 2004.

58. Following the transfer, VOSE learned that a command officer had advised others in the City of Springfield police department that VOSE"s "career in CID is history" and that VOSE "had burned his bridges". The acronym "CID" stands for criminal investigation division.

59. The treatment which VOSE received by and the actions taken against him by Defendant KLIMENT and Defendant ROUSE, culminating in VOSE's demotion from a supervisory position in a criminal investigation unit to the patrol division, communicated to VOSE that he had no credibility to his superior officers and made it intolerable for VOSE to continue to work as a police officer with the City of Springfield police department. Accordingly and for these reasons, VOSE felt forced to resign his employment as a City of Springfield police department officer as the police department command officers had, by their actions, made it impossible for VOSE to continue working as a police officer for the City of Springfield under their command. VOSE resigned on January 19, 2006.

60. All of the actions taken by Defendant KLIMENT and Defendant ROUSE were taken under color of state law and by reason of the authorities they possessed by reason of their command positions with the City of Springfield Police Department.

61. The actions of VOSE in communicating information and concerns about the conduct of the detectives constituted an exercise by VOSE of his right to freedom of speech under the First Amendment to the United States Constitution as the information and concerns communicated by VOSE alleged matters of government corruption , malfeasance, misdeeds and illegality and was and is a matter of public concern.

62. As a result of VOSE's exercise of his right to freedom of speech on these matters of public concern, VOSE was retaliated against by Defendant KLIMENT and Defendant ROUSE acted either individually and in concert with each other or with others to set in motion the events alleged in this Complaint, namely (a) the interference with the working environment of the narcotics unit thereby interfering with VOSE's ability to run that unit; (b) the written reprimand of VOSE for not timely submitting a memorandum in response to the ultimatum given VOSE to get along with the detectives or transfer out of the narcotics unit; (c) the demotion of VOSE from the position of supervising Sergeant of the narcotics unit to the patrol division and (d) the written reprimand of VOSE regarding the incident at the courthouse during the Grimm trial.

63. These actions of Defendant KLIMENT and Defendant ROUSE directed against VOSE were intended to send a message to VOSE, as well as to other officers in the police department who would see the actions taken against VOSE, that he and they would suffer retaliation (a) if they raised issues of wrongdoing by their fellow City of Springfield police officers or (b) if they raised issues of wrongdoing by their fellow City of Springfield police officers which would be embarrassing to the City of Springfield police department and their command officers if the information were to become public.

64. These actions of Defendant KLIMENT and Defendant ROUSE directed against VOSE in retaliation for VOSE's exercise of his right to freedom of speech on these matters of public concern served to isolate VOSE from his fellow officers and other police department personnel, constituted a chilling effect on VOSE, caused VOSE embarrassment and emotional distress, damaged VOSE's personal and professional reputation among his fellow officers and caused him to lose wages and retirement benefits.

65. Defendant KLIMENT and Defendant ROUSE knew or should have known that the information and concerns raised to them by VOSE constituted matters of public concern.

66. Defendant KLIMENT and Defendant ROUSE knew or should have known that the law at the time of the events relevant to this Complaint precluded

retaliation against VOSE for bringing these matters of public concern to their attention and to the attention of the Mayor of the City of Springfield.

67. The actions of Defendant KLIMENT and Defendant ROUSE directed against VOSE were done intentionally, willfully, deliberately and maliciously with the intent to cause harm to VOSE.

68. The actions of Defendant KLIMENT and Defendant ROUSE as alleged in this Complaint and as directed against VOSE were motivated primarily to retaliate against VOSE for VOSE's exercise of his First Amendment rights.

Count I

1. Plaintiff RONALD VOSE incorporates by reference paragraphs 1 through 68 of the Factual Statement allegations of this Complaint as and for paragraphs 1 through 68 of Count I of this Complaint.

69. The foregoing acts and conduct Defendant DONALD KLIMENT and Defendant ROUSE constituted acts of unlawful retaliation against Plaintiff RONALD VOSE for the exercise by Plaintiff RONALD VOSE of his rights under the First Amendment to the United States Constitution and in violation of the civil rights of Plaintiff RONALD VOSE.

70. As a direct result of the foregoing acts and conduct Defendant DONALD KLIMENT against him,

Plaintiff RONALD VOSE suffered damages as alleged in this Complaint.

Wherefore, Plaintiff RONALD VOSE prays that this Court enter judgement in his favor on Count I of this Complaint and against Defendant DONALD KLIMENT in his individual capacity and award Plaintiff RONALD VOSE (a) compensatory damages in an amount $300,000.00, (b) punitive damages in the amount of $100,000.00, (c) attorneys fees and costs pursuant to 42 U.S.C. §1988, (d) and such further relief as this Court deems fair and equitable.

Plaintiff Demands Trial by Jury On Count I

Count II

1. Plaintiff RONALD VOSE incorporates by reference paragraphs 1 through 68 of the Factual Statement allegations of this Complaint as and for paragraphs 1 through 68 of Count II of this Complaint.

69. The foregoing acts and conduct Defendant WILLIAM ROUSE and Defendant ROUSE constituted acts of unlawful retaliation against Plaintiff RONALD VOSE for the exercise by Plaintiff RONALD VOSE of his rights under the First Amendment to the United States Constitution and in violation of the civil rights of Plaintiff RONALD VOSE.

70. As a direct result of the foregoing acts and conduct Defendant WILLIAM ROUSE against him,

Plaintiff RONALD VOSE suffered damages as alleged in this Complaint.

Wherefore, Plaintiff RONALD VOSE prays that this Court enter judgement in his favor on Count II of this Complaint and against Defendant WILLIAM ROUSE in his individual capacity and award Plaintiff RONALD VOSE (a) compensatory damages in an amount $300,000.00, (b) punitive damages in the amount of $100,00.00, (c) attorneys fees and costs pursuant to 42 U.S.C. §1988, (d) and such further relief as this Court deems fair and equitable.

Plaintiff Demands Trial By Jury on Count II

RONALD VOSE
Plaintiff

By: /s/ Howard W. Feldman
Howard W. Feldman ##00788066
Lead Attorney and One of His Attorneys
FELDMAN, WASSER,
DRAPER & BENSON
1307 S. Seventh St.
Post Office Box 2418
Springfield, IL 62705
217/544-3403